

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

Case No. 17-BK-3283-LTS

(Jointly Administered)

AMBAC ASSURANCE CORPORATION,

Movant,

v.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO, as
representative of THE COMMONWEALTH OF
PUERTO RICO,

Respondent.

PROMESA
Title III

Re: ECF Nos. 16884, 16963.

**RESPONSE OF FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO TO AMBAC ASSURANCE CORPORATION’S URGENT
MOTION FOR BRIEFING SCHEDULE WITH RESPECT TO THE OBJECTION OF
AMBAC ASSURANCE CORPORATION, PURSUANT TO BANKRUPTCY CODE
SECTION 502 AND BANKRUPTCY RULE 3007, TO CLAIM ASSERTED BY THE
OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF THE COMMONWEALTH
OF PUERTO RICO APPOINTED IN THE COMMONWEALTH’S TITLE III CASE**

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To The Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),¹ submits this response (the “Response”) to *Ambac Assurance Corporation’s Urgent Motion for Briefing Schedule with Respect to the Objection of Ambac Assurance Corporation, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claim Asserted by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Appointed in the Commonwealth’s Title III Case* [ECF No. 16963]² (the “Urgent Scheduling Motion”) filed by Ambac Assurance Corporation (“Ambac”). In support of this Response, the Oversight Board respectfully avers as follows:

RESPONSE

1. On June 3, 2021, Ambac filed the *Objection of Ambac Assurance Corporation, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claim Asserted by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Appointed in the Commonwealth’s Title III Case* [ECF No. 16884] (the “Ambac Claim Objection”), objecting to the proof of claim filed by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Appointed in the Commonwealth’s Title III Case (the “Retiree Committee”), designated Proof of Claim No. 21533 (the “Retiree Committee Claim”).

2. According to Ambac, the Retiree Committee Claim overstates the pension claims for three reasons: (1) it fails to account for an \$8.2 billion reduction of the present value of pension

¹ PROMESA is codified at 48 U.S.C. §§ 2101-2241.

² Unless otherwise indicated, all ECF numbers referenced herein refer to the docket in Case No. 17 BK 3283-LTS.

claims by the Commonwealth's pension experts; (2) it computes the present value of pension claims with a discount rate too low to reflect the risk of non-payment, and thereby overstates the pension claim by \$23.6 billion, and (3) it is not audited to see if dead persons are on the pension rolls, while Ambac's partial 'death audit' found a present value of \$56.5 million that would be paid to deceased persons which is less than 0.2% of the present value of the pension liability.

3. The Oversight Board's response to the Ambac Claim Objection will be that it should be terminated for two reasons. *First*, Ambac lacks standing, and, *second*, none of Ambac's objections serve any purpose because the treatment of pension claims under the Oversight Board's proposed plan of adjustment is not based on the Retiree Committee Claim. As a practical matter, the Oversight Board's contemplated treatment of pension claims already takes into account the \$8.2 billion reduction in claims, and is independent of the discount rate used to compute a present value of future pension payments. Therefore, the Oversight Board intends to file a motion seeking the termination or stay of the Ambac Claim Objection (the "Motion to Terminate") in the next seven days unless the Court orders a faster response. If granted by the Court, the Motion to Terminate will either obviate the need for other briefing in connection with the Ambac Claim Objection or defer it to an appropriate time.

4. The Oversight Board proposes that the following schedule should be adopted in connection with the Motion to Terminate:

- (a) **June 24, 2021 at 5:00 P.M. (Atlantic Standard Time)**: The Oversight Board and any other supporting parties will file the Motion to Terminate and any supporting motion or pleadings.
- (b) **July 12, 2021, at 5:00 P.M. (Atlantic Standard Time)**: Deadline to file any objections or responses to the Motion to Terminate.
- (c) **July 23, 2021, at 5:00 P.M. (Atlantic Standard Time)**: Deadline to file any replies in support of the Motion to Terminate.

(d) **August 4 and/or 5, 2021 (August Omnibus Hearing)**: Hearing on the Motion to Terminate.

Only if the Motion to Terminate is denied would further briefing and a hearing on the Ambac Claim Objection be required.

5. This Court's precedent supports the scheduling proposed by the Oversight Board. Specifically, when presented with a claim objection filed by the Official Committee of Unsecured Creditors (the "Committee") against the PREPA bond trustee's master bond claim, the Court required that briefing first be held on issues relating to the Committee's standing and other gating issues before scheduling briefing on the claim objection itself. *See* Case No. 17-BK-4780-LTS, ECF No. 1740.

WHEREFORE the Court should enter an order scheduling briefing on the Motion to Terminate substantially in the form attached hereto as **Exhibit A** and grant the Oversight Board such other and further relief as is just.

Respectfully submitted,

/s/ Martin J. Bienenstock

Martin J. Bienenstock (*pro hac vice*)

Paul V. Possinger (*pro hac vice*)

Ehud Barak (*pro hac vice*)

PROSKAUER ROSE LLP

Eleven Times Square

New York, NY 10036

Tel: (212) 969-3000

Fax: (212) 969-2900

-and-

Elliot R. Stevens (*pro hac vice*)

PROSKAUER ROSE LLP

One International Place

Boston, MA 02110

Tel: (617) 526-9600

Fax: (617) 526-9899

*Attorneys for the Financial Oversight and
Management Board as representative for the
Debtor*

/s/ Hermann D. Bauer

Hermann D. Bauer
USDC No. 215205
O'NEILL & BORGES LLC
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

*Co-Attorneys for the Financial Oversight and
Management Board as representative of the
Debtor*

Exhibit A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

Case No. 17-BK-3283-LTS

(Jointly Administered)

AMBAC ASSURANCE CORPORATION,

Movant,

v.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO, as
representative of THE COMMONWEALTH OF
PUERTO RICO,

Respondent.

PROMESA
Title III

Re: ECF Nos. 16884, 16963.

**ORDER SCHEDULING BRIEFING WITH RESPECT TO THE OBJECTION
OF AMBAC ASSURANCE CORPORATION, PURSUANT TO BANKRUPTCY CODE
SECTION 502 AND BANKRUPTCY RULE 3007, TO CLAIM ASSERTED BY THE
OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF THE COMMONWEALTH
OF PUERTO RICO APPOINTED IN THE COMMONWEALTH'S TITLE III CASE**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Upon the Financial Oversight and Management Board for Puerto Rico's *Response to Ambac Assurance Corporation's Urgent Motion for Briefing Schedule with Respect to the Objection of Ambac Assurance Corporation, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claim Asserted by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Appointed in the Commonwealth's Title III Case* [ECF No. ____] (the "Response");² and the Court having found it has subject-matter jurisdiction over this matter pursuant to PROMESA section 306(a); and it appearing that venue in this district is proper pursuant to PROMESA section 307(a); and the Court having found that the Oversight Board provided adequate and appropriate notice of the Response and the request for a briefing schedule on its proposed Motion to Terminate the Ambac Claim Objection set forth therein under the circumstances and that no other or further notice is required; and upon the record herein, after due deliberation thereon, the Court having found that good and sufficient cause exists for granting the relief set forth herein.

IT IS HEREBY ORDERED THAT:

1. Briefing in response to the Ambac Claim Objection shall be as follows:
 - a. **June 24, 2021 at 5:00 P.M. (Atlantic Standard Time)**: Deadline for the Oversight Board to file its Motion to Terminate and any supporting pleadings, and for other parties in interest to join the Motion to Terminate or file any other pleadings addressing procedural and jurisdictional issues.
 - b. **July 12, 2021, 5:00 P.M. (Atlantic Standard Time)**: Deadline to file any objections or responses to the Motion to Terminate.
 - c. **July 23, 2021, 5:00 P.M. (Atlantic Standard Time)**: Deadline to file any replies in support of the Motion to Terminate.
 - d. **August 4 and/or 5, 2021 (August Omnibus Hearing)**: Hearing on the Motion to Terminate.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Urgent Motion.

2. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this order.

3. This order resolves ECF No. 16963.

Dated: _____, 2021.

SO ORDERED:

HONORABLE LAURA TAYLOR SWAIN
United States District Judge